

COU14D046

Title: Higher Education Code of Governance
Author: Registrar & Secretary
Date: 7 May 2015
Circulation: Council
Agenda: COU14A006
Status: Open

Issue

The (revised) Higher Education Code of Governance produced by the Committee of University Chairs (CUC), dated December 2014, was circulated to all members of Council on 11 March 2015. CUC has been clear that the revision of the code and its adoption by the sector is a desirable and necessary alternative to greater scrutiny and regulation by other bodies.

This report seeks to assure Council that it can report an appropriate level of compliance with the seven primary elements set out in the code (and the “**must**” supporting statements), or it can do so with some relatively straightforward additional steps.

Under the new code a review of Council effectiveness is expected on a four-year cycle, making 2015 the due date. A further review of compliance with the new code could be the key theme of the effectiveness review.

Recommendation

Council is invited to:

- a) confirm it has an appropriate level of assurance that it complies with the code, subject to the additional measures set out in the discussion section below;
- b) establish a small committee to oversee the periodic review of Council effectiveness. Historically this has been chaired by the Deputy Chair of Council and could include a further independent member, a Pro-Vice-Chancellor, a Senate representative and a student representative.

Resource Implications

There are no immediate resource implications.

Risk Implications

Failure to comply with the code albeit with explanation, could possibly invite the closer scrutiny predicted by CUC.

Equality and Diversity

This is one of the key themes of the code and would be scrutinised as part of the review of compliance.

Timing of decisions

An appropriate compliance statement may be included in the 2015 financial statements. The effectiveness review should be completed during this calendar year.

Further Information

Further information is available from the Registrar and Secretary, Mr Brian Summers, tel. 01603 592208, email b.summers@uea.ac.uk.

Discussion

The Deputy Chair (Kathryn Skoyles) has engaged with the CUC meetings during the development of the Code. Kathryn has most helpfully reviewed the Code and has made recommendations which are covered in this report.

Compliance

Page 6 of the Code explains that in order to report that UEA has applied the Code, Council needs to be confident that it has in place the primary elements and it meets or exceeds the requirements of the supporting “**must**” statements; or it explains where it considers the whole primary element or “**must**” statements are inappropriate.

It has been argued that since reports and codes on corporate governance have become more prominent along with the convention of “comply” or “explain”, there has been a tendency to comply simply because it is the path of least resistance. However, in this case the University can already demonstrate a high level of compliance with the key elements and the “**must**” statements and in those limited areas where compliance may not be meeting the minimum standards or exceeding them as extensively as in others, these are areas of oversight that Council would probably wish to see reinforced.

The attached table sets out the 7 primary elements and the supporting “**must**” questions and comments on the level of assurance that Council currently enjoys. There are possibly two points for immediate attention:

Element 4: assurance of effective academic governance – Council has strong cross-representation with the membership of Senate and student representation on Council. However, it does not benefit from a systematic reporting from Senate, to which it delegates the oversight of academic performance and assurance of academic standards. It is suggested in the short-term that Council might ask to receive summary reports following Senate meetings.

Element 6: promoting equality and diversity - Council might benefit from a report to an early meeting on the work of the Equality and Diversity Committee and performance against key indicators, to be included in section “A”. While Council has received reports in the past these have tended to be simply report, rather than being more prominently for discussion.

The effectiveness review

It is suggested that the effectiveness review (along with routine surveys of Council members to test satisfaction with the operation of Council) undertakes a more in-depth study of the code and the importance of the “should” and “could consider” statements.

The review should include the “Orange Book”, the guidance for members of UEA Council which has traditionally built upon the CUC guidance and provided more “local” information, and the statement of Primary Responsibilities set out in the code and its overall applicability to the work of Council. The implementation of the recommendations from the 2011 effectiveness review, should also be considered.

Attachment

Table of 7 Primary Elements and Supporting “**must**” Questions together with Comments.

Primary Elements	Supporting “must” questions	Comment
<p>Element 1 The governing body is unambiguously and collectively accountable for institutional activities, taking all final decisions on matters of fundamental concern within its remit.</p>		<p>The Charter clearly establishes Council as the Executive Governing Body of the University.</p>
	<p>1.1: The governing body has a responsibility for all decisions that might have significant reputational or financial implications (including significant partnerships or collaborations). It must therefore seek assurance that the institution meets all legal and regulatory requirements imposed on it as a corporate body, including through instruments of governance such as statutes, ordinances and articles.</p>	<p>Council evidently approves:</p> <ul style="list-style-type: none"> • periodic corporate strategy • five year financial plan and annual resources allocation • the annual financial statements with a number of assurances supported by the Audit function • new partnerships and collaborations of a significant nature (and particularly where new legal vehicles are created). It has adopted a JV policy and lessons learnt guidance • the appointment of the Chair for the Health & Safety Executive and the Equality and Diversity Committee • the scheme of delegation which places responsibility upon the Vice-Chancellor for the generality of compliance with legislation and regulation

	<p>1.2:The regulatory and legal requirements will vary depending on the constitution of individual HEIs, but, for most governing bodies, members are charitable trustees and must comply with legislation governing charities and case law in the exercise of their duties. Some institutions are constituted as companies, and governing body members are normally the company's directors; the primary legislation in this case will be the requirements of the Companies Acts.</p>	<p>Council is fully aware of its legal standing as a chartered institution and a charity through the induction process and circulation of the current Guide. This is supported by the "Orange Book".</p>
	<p>1.3:In both instances members are required to discharge their duties in line with the accepted standards of behaviour in public life, ultimately accepting individual and collective responsibility for the affairs of the institution. The main accountability requirements falling upon the governing body in respect of public funding are set out in financial memoranda issued by the funding bodies and these must be followed.</p>	<p>The need to adhere to the Nolan Principles is well understood by Council. The Financial Memoranda are the "meat and drink" of the University's relationship with the Funding Council and appropriate assurances are given through Audit.</p>
	<p>1.4:Student and staff members of the governing body share the same legal responsibilities and obligations as other members and must not be routinely excluded from discussions.</p>	<p>Council has agreed that instances in which student members are excluded should be kept to an absolute minimum, and normally only where the University's general duty of care to named or identifiable members of staff has to be weighed in the balance.</p>
<p>Element 2 The governing body protects institutional reputation by being assured that clear regulations, policies and procedures that adhere to legislative and regulatory requirements are in place, ethical in nature, and followed.</p>	<p>2.1:In protecting the reputation of the institution the governing body will want to ensure the highest standards of ethical behaviour among its members, who must act ethically at all times in line with the accepted standards of behaviour in public life, and in the interests of the institution.</p>	<p>There is a register of interests which Councillors are required to complete annually and the Ordinances establish the approach to making clear any conflicts of interest when decisions are made. The University maintains the policies you would expect and as are required by law including public interest disclosure.</p>
	<p>2.2:As such, members of governing bodies must act, and be perceived to act, impartially, and not be influenced by social or business relationships. A member who has a pecuniary, family or other personal interest in any matter under discussion must disclose the interest. A member does not necessarily</p>	<p>See 1.3 above.</p>

	have a pecuniary interest merely because he/she is a member of staff or a student.	
	2.3:The governing body must ensure that its decision-making processes are free of any undue pressures from external interest groups, including donors, alumni, corporate sponsors and political interest groups.	Council will be confident that it is free from undue pressure.
	2.4:Members whose views are not consistent with the decisions of the governing body should abide by the principle of collective decision making and avoid putting specific interests before those of the institution. Individually they must not make any agreement for which they do not have authority.	Council members are aware of the need to act collectively in the best interests of the University in their appointment letter. Individual members of Council, other than the Vice-Chancellor and Pro-Vice-Chancellors operating within the scheme of delegation, cannot enter into agreements.
	2.5:Legislation requires that the governing body must take practical steps to ensure that the students' union or association operates in a fair, democratic, accountable and financially sustainable manner. This requirement is in addition to corporate and charity legislation that many student organisations are independently subject to.	Council has approved the required Code of Practice and effectively delegates oversight to the Registrar. The Director of Finance is a trustee.
Element 3 The governing body ensures institutional sustainability by working with the Executive to set the institutional mission and strategy. In addition, it needs to be assured that appropriate steps are being taken to deliver them and that there are effective systems of control and risk management.	3.1:The governing body is responsible for the mission, character and reputation of the institution at a strategic level, and members will need to be adequately informed in order to carry out this key responsibility. They can expect the head of the institution to help them by providing strategic advice and guidance on the mission and strategic development of the institution.	These responsibilities are embedded in the functions of Council as set out in the Statutes.
	3.2:The strategic plan plays a crucial role in ensuring the successful performance of the institution, and the governing body will want to demonstrate its commitment to and support for the plan by formally approving or endorsing it in accordance with its constitution. Aligned to this, it must ensure there is an appropriate financial strategy and be responsible, without delegation, for the approval of the annual	Council's understanding of these responsibilities is clear and exemplified by its commitment to one or two extended periods for consideration of strategic issues in any year. Council cannot delegate the approval of the budget or the financial statements.

	budget.	
	3.3:It must rigorously assess all aspects of the institution's sustainability, in the broadest sense, using an appropriate range of mechanisms which include relevant key performance indicators (KPIs) not just for the financial sustainability of the institution but also for its impact on the environment.	Risks to the institution's sustainability dominate the approved risk register and which is routinely scrutinised by the Finance Group and tested by Council. Financial performance is monitored by Finance Group. Council scrutinises HEFCE assessment of institutional risk and comparative financial performance.
	3.4:In ensuring sustainability, the governing body must be in a position to explain the processes and the types of evidence used and provide any assurances required by funders. Where such assessments indicate serious issues which could affect future sustainability, the governing body must undertake appropriate remedial action.	Council considers annually and approves the sustainability statement and would act if the sustainability of the institution was in any way under threat.
	Regulatory Requirements 3.5:The governing body must receive assurance that the institution is meeting the conditions of funding as set by regulatory and funding bodies and other major institutional funders which include the requirements of the financial memoranda. These include the need to: use public funds for proper purposes and achieve good value for money; have a sound system of risk management, financial control and governance; ensure the use of regular, reliable, timely and adequate information to monitor performance and track the use of public funds; and safeguard institutional sustainability.	The annual audit provides this reassurance.
	3.6:The governing body must periodically review the delegated authority of the accountable officer (usually the Vice-Chancellor) and inform its funding body of any 'material adverse' change in its circumstances and any serious incident which, in the judgement of the accountable officer and the governing body, could have a substantial impact on the interests of the institution.	Council has approved the scheme of delegation but this has not been recently reviewed.

	3.7:Requirements of governing bodies as stipulated by the funding bodies relating to audit include: appointing the Audit Committee; considering and, where necessary, acting on the annual report from the Audit Committee; appointing the external auditors; considering the annual report of the internal audit service; and receiving and approving the audited annual financial statements (this responsibility to be reserved to the governing body for its collective decision, without delegation).	Council evidently adheres to these requirements.
	3.8:Data submitted for funding purposes on behalf of the governing body must comply with directions published by the respective funding body and includes: annual accountability returns; any data requested by the Higher Education Statistics Agency (HESA); any information needed for the purpose of charity regulation; and other information the funding body may reasonably request to understand the institution's risk status.	It does. It is subject to periodic HEFCE audit.
	Day-to-day operations 3.9:Operational financial control will be exercised by officers of the institution under delegation from the governing body, and responsibility for financial management and advising on financial matters is generally delegated to the Director of Finance (or equivalent). That individual must have access to the head of the institution whenever he/she deems it appropriate.	The Director of Finance is a member of the Executive Team (Resources) and Finance Group. There is no question that he does not have access to the Vice-Chancellor.
	3.10:The governing body must get assurance that there are effective arrangements in place for the management and quality assurance of data. To do so the governing body could seek assurance from the Audit Committee about data quality.	The quality of data is subject to annual audit, internally and periodic audit by HEFCE,
	Audit 3.11:The Audit Committee needs to be a small, well-informed authoritative body which has the expertise	The Audit Committee currently comprises 4 members, 2 members of Council and 2 external members, one with particular experience in

	<p>and the time to examine risk management control and governance under delegation from the governing body. It cannot confine itself to financial matters, and its role extends to all areas of institutional activity. While responsibility for devising, developing and maintaining control systems lies with the Executive, internal audit provides independent assurance to the governing body which should have an approved annual audit plan (<i>it can delegate to its Audit Committee the power to agree the plan on its behalf</i>).</p>	<p>accounting. Audit committee approves the annual audit plan.</p>
	<p>3.12: The Audit Committee must be composed of a majority of independent members (who may also be drawn from outside the governing body) and produce an annual report for the governing body, including: its opinion on the adequacy and effectiveness of the institution's risk management, control and governance arrangements; processes for promoting value for money (VFM) through economy, efficiency and effectiveness; and (in institutions receiving funding body support) the management and quality assurance of data.</p>	<p>The Audit Committee is entirely made up of independent members and discharges the functions as set out.</p>
	<p>Remuneration 3.13: The proper remuneration of all staff, especially the Vice-Chancellor and his/her immediate team, is an important part of ensuring institutional sustainability and protecting the reputation of the institution. Accordingly governing bodies must establish a Remuneration Committee to consider and determine, as a minimum, the emoluments of the Vice-Chancellor and other senior staff as prescribed in constitutional documents or by the governing body.</p>	<p>We clearly comply.</p>
	<p>3.14: The Remuneration Committee composition must include the Chair of the governing body, be composed of a majority of independent members (who, as with audit, may also be drawn from outside the governing body) and have appropriate experience</p>	<p>The Remuneration Committee comprises the Chair, the Treasurer, one other independent member and the Vice-Chancellor (other than for consideration of the Vice-Chancellor's remuneration).</p>

	available to it. The Vice-Chancellor or other senior staff may be members of, or attend, Remuneration Committee but must not be present for discussions that directly affect them.	
	3.15: The Remuneration Committee must consider comparative information on the emoluments of employees within its remit when determining salaries, benefits and terms and conditions and ensure that all arrangements are unambiguous and diligently recorded. It must report on its decisions and operation at least annually to the governing body; such a report should not normally be withheld from any members of the governing body.	We comply using comparative data from the UCEA annual survey.
	3.16: Remuneration Committee members must consider the public interest and the safeguarding of public funds alongside the interests of the institution when considering all forms of payment, reward and severance to the staff within its remit.	This is well understood by Remuneration Committee.
Element 4 The governing body receives assurance that academic governance is effective by working with the Senate/Academic Board or equivalent as specified in its governing instruments in order to maintain quality.	4.1: A high-quality student experience and, where appropriate, research portfolio are determinants of institutional sustainability and are therefore core governing body responsibilities which it shares with the wider institutional community. This, taken with the governing body's responsibility for the long-term reputation of the institution, means that it must satisfy itself that academic governance is operating effectively.	Council routinely monitors league table performance, including the NSS and THE student satisfaction surveys, REF outcomes and world university rankings. It will receive the outcomes of the periodic QAA review (due this year). Council approves strategy which has a high quality student experience and research endeavour at its core. Application rates and research funding are all indicators of quality, which are monitored by Council. Council observes there is significant cross membership between Senate and Council.
	4.2: The underlying principles of sound academic governance are based upon collegiality, and it follows that the governing body must therefore respect the role, as defined within charters, statutes or articles, of the Senate/Academic Board and other bodies involved in academic governance. However governing bodies will still wish to receive assurance that	Council maintains a high level risk register which has invariably given appropriate attention to major collaborations. It reviews significant projects annually and approves all joint ventures.

	academic risks (such as those involving partnerships and collaboration, recruitment and retention, data provision, quality assurance and research integrity) are being effectively managed.	
	4.3: The governing body must understand and respect the principle of academic freedom, the ability within the law to question and test received wisdom, and to put forward new ideas and controversial or unpopular opinions, without placing themselves in jeopardy of losing their jobs or privileges, and its responsibility to maintain and protect it as enshrined in freedom of speech legislation.	This is provided for in the Statutes as an absolute requirement and protection for academic staff.
Element 5 The governing body works with the Executive to be assured that effective control and due diligence takes place in relation to institutionally significant external activities.	5.1: As already noted, the governing body has a responsibility to ensure the long-term sustainability of the institution and maintaining its reputation. It will therefore want assurance on external activities with significant potential financial or reputational risks. Where such activities involve commercial transactions, care must be taken to ensure that arrangements conform to the requirements of charity law and regulation. This is particularly the case where institutions have established subsidiary entities, for example separate operating companies or charitable trusts.	See 4.2 above.
	5.2: The governing body will also want to ensure that fund-raising, donations, corporate sponsored research and partnerships and similar activities do not inappropriately influence institutional independence, mission or academic integrity.	The University has a robust policy setting out the principles and processes for accepting donations.
Element 6 The governing body must promote equality and diversity throughout the institution, including in relation to its own operation.	6.1: HEIs are required by law to comply with extensive equality and diversity legislation, and governing bodies are legally responsible for ensuring the compliance of their institution. The legislation covers the individual rights of staff and students not to suffer discrimination on the grounds of a number of protected characteristics ⁴ . Legislation in this area	

	does not distinguish between domestic and international students and staff.	
	6.2: Beyond this there is evidence that board diversity promotes more constructive and challenging dialogue, which in turn can improve governance outcomes by helping to avoid 'groupthink' and that as a result there is a strong business case for diversity alongside legal and moral expectation.	
	6.3: The governing body must ensure that there are arrangements in place to: <ul style="list-style-type: none"> • eliminate unlawful discrimination, harassment and victimisation; • advance equality of opportunity between people who do and do not share a protected characteristic; and • foster good relations between people who share and those who do not share a protected characteristic. 	A member of Council chairs the Equality Committee and the University has established a number of groups (Access All Areas, Multi-Faith, ResNet) and teams (Equality and Diversity, Widening Participation). Council receives an annual report aligned to strategic goals.
	6.4: This means going further than simply avoiding discrimination, and it requires the active promotion of equality in a number of defined areas. The governing body must therefore satisfy itself that agreed action plans to implement the equality and diversity strategy are progressed throughout the institution.	See 6.3.
	6.5: The governing body must also routinely reflect on its own composition and consider taking steps to ensure that it reflects societal norms and values.	CMC undertakes this.
Element 7 The governing body must ensure that governance structures and processes are fit for purpose by referencing them against recognised standards of good practice.	7.1: The governing body must have a majority of external members, who are independent of the institution. All members should question intelligently, debate constructively, challenge rigorously, decide dispassionately and be sensitive to the views of others both inside and outside governing body meetings.	This is the case (Statute 1.2.2)

	7.2: The governing body must have the power to remove any of its members from office, and must do so if a member breaches the terms of his/her appointment.	This is the case (Statute 1.10).
	7.3: The governing body must establish a Nominations Committee (or similar) to advise it on the appointment of new members and the terms of existing members as well as the perceived skills balance required on the governing body. Normally final decisions on appointment are taken by the governing body.	This is the case.
	7.4: The governing body will need to ensure suitable arrangements exist for the continuation of business in the absence of the Chair. In some cases arrangements for a Deputy Chair are codified within institutions' governing instruments; where they are not, the Nominations Committee can advise the governing body on what arrangements should be.	Council appoints a Deputy Chair.
	7.5: The Chair and Secretary will want to ensure all members receive an appropriate induction to their role and the institution as necessary.	Members attend a half-day induction.
	7.6: There is an expectation, often enshrined within the constitutional documents of HEIs, that governing bodies will contain staff and student members and encourage their full and active participation.	This is the case.
	7.7: Current normal practice is not to remunerate external members and to pay only travelling and other incidental expenses. However, if the governing body decides it is appropriate to remunerate, it will need to consider the: <ul style="list-style-type: none"> • provisions of charity and employment law; • implications for the division of responsibilities between the governing body and the executive; • public service ethos which applies generally among HE governors; • need to be explicit about time commitments; 	Council does not remunerate members.

	<ul style="list-style-type: none"> • need to apply a formal process of appraisal to the remunerated governor. <p>Where it is decided to remunerate, payments would need to be both commensurate with the duties carried out and reported in the audited financial statements.</p>	
	<p>7.8: The Secretary (or Clerk) is responsible to the governing body for the provision of operational and legal advice in relation to compliance with governing instruments, including standing orders. He/she is also responsible for ensuring information provided to the governing body is timely, appropriate and enables an informed discussion so that it may effectively discharge its responsibilities.</p>	
	<p>7.9: All members of the governing body must have access to the services of the Clerk. Arrangements for the appointment or removal of the Secretary/Clerk may be defined by governing instruments; where they are not, it must be a decision for the governing body as a whole.</p>	<p>Removal of the Registrar & Secretary is currently governed (along with all other academic and academic-related staff) by Statute 7. It does not require a decision by Council as a whole. Statute 7 is under review.</p>
	<p>7.10; Governing bodies need to adopt an approach of continuous improvement to governance, in order to enhance their own effectiveness and provide an example to institutions about the importance of review and evaluation.</p>	
	<p>7.11: Accordingly, governing bodies must conduct a regular, full and robust review of their effectiveness and that of their committees, the starting point for which should be an assessment against this Code and the statutory responsibilities alongside those which it has assumed and articulated independently (e.g. through a statement of primary responsibilities). Many governing bodies find an external perspective in this process useful, whether provided by specialist consultants or peer support from other governing</p>	<p>Council conducts reviews on (currently) a five-year basis of its effectiveness, and on the last occasion involved an external consultant.</p>

	bodies.	
	<p>7.12: Codes of governance in other sectors adopt a period of two or three years. Recognising the need to balance the cyclical nature of HE and the impact this can have on the implementation and embedding of new practices, and the swiftly evolving HE and broader legislative environment, reviews must be conducted at least every four years with, as a minimum, an annual summary of progress towards achieving any outstanding actions arising from the last effectiveness reviews.</p>	<p>The last review was conducted in 2011, it now appears desirable that this should be undertaken again in 2015.</p>